

**RULES
OF
THE TENNESSEE DEPARTMENT OF CORRECTION
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 0420-1-1
CORRECTIONAL SERVICES CONTRACTING
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0420-1-1-.01 SUMMARY AND PURPOSE. The Private Prison Contracting Act of 1986, T.C.A. §§41-24-101 *et seq.*, authorizes the Tennessee Department of Correction to contract with private concerns on a limited basis to afford an opportunity to determine if savings and efficiencies can be effected for the operation of correctional facilities while assuring that the interests of the state's citizens and employees are fully protected.

Authority. T. C.A. §41-24-115. **Administrative History:** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986; effective November 29, 1986.

0420-1-1-.02 DEFINITIONS.

- (1) For the purpose of these rules, the following definitions shall apply unless the context requires otherwise:
 - (a) *Department* means the Tennessee Department of Correction.
 - (b) *Commissioner* means the Commissioner of the Tennessee Department of Correction.
 - (c) *Prison or facility* means any adult institution operated by or under the authority of the Tennessee Department of Correction.
 - (d) *Correctional services* means the following functions, services and activities, when provided within a prison or otherwise:
 1. Education, training and job programs;
 2. Recreational, religious and other activities;
 3. Development and implementation assistance for classification, management information systems, or other information systems or services;
 4. Food services, commissary, medical services, transportation, sanitation, or other ancillary services;
 5. Counseling, special treatment programs, or other programs for special needs;
 6. Operation of facilities, including management, custody of inmates, and providing security;

(Rule 0420-1-1-.02, continued)

- (e) *Prison contractor* or *contractor* means any entity entering into contractual agreement with the Commissioner to provide correctional services to inmates under the custody of the Tennessee Department of Correction.

Authority. T.C.A. §41-24-102. **Administrative History:** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986; effective November 29, 1986.

0420-1-1-.03 AUTHORITY TO CONTRACT. The Commissioner is authorized to enter into contracts with private concerns for correctional services when he deems such appropriate, subject to the requirements and procedures of T.C.A. §§12-4-109 and 12-4-110 and any additional requirements contained within the Private Prison Contracting Act of 1986, T.C.A. §41-24-101 *et seq.* Such Act authorizes contracts for operation of facilities only for the Carter County Correctional Facility.

Authority. T.C.A. §§41-24-103 and 41-24-115. **Administrative History:** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986; effective November 29, 1986.

0420-1-1-.04 CONTRACT PROCEDURES FOR MANAGEMENT OF CARTER COUNTY CORRECTIONAL FACILITY.

- (1) Any contract for the operation of the Carter County Correctional Facility, including management, custody of inmates and provision of security may be entered into only after each of the following requirements and/or conditions are met:
 - (a) Any request for proposals, any original contract, any contract renewal and any price and/or cost adjustment or any other amendment to any contract shall first be approved by the following:
 - 1. The State Building Commission;
 - 2. The State Attorney General; and
 - 3. The Commissioner of Correction.
 - (b) Each of the following legislative committees shall review any request for proposals, any original contract, and any proposed contract renewal:
 - 1. Select Oversight Committee on Corrections;
 - 2. Fiscal Review Committee;
 - 3. Senate State and Local Government Committee;
 - 4. House State and Local Government Committee.
 - (c) To be considered for an award of a contract, the proposer must demonstrate to the satisfaction of each of the officials set forth in subsection (1) (a) of this paragraph that it has:
 - 1. The qualifications, operations and management experience and experienced personnel necessary to carry out the terms of the contract;

(Rule 0420-1-1-.04, continued)

2. The ability to comply with applicable correctional standards and specific court orders, if required; and
 3. Demonstrated history of successful operation and management of other correctional facilities.
- (2) Proposer must agree that the state may cancel the contract at any time after the first year of operation, without penalty to the state, upon giving ninety (90) days written notice.
- (a) Any such contract may provide for annual contract price and/or cost adjustments: provided, however, any such adjustments may be made only once each year effective upon the anniversary of the effective date of the contract. If any adjustment is made pursuant to terms of the contract, it shall be applied to total payments made to the contractor for the previous contract year and shall not exceed the percent of change in the average consumer price index (all items-city average) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for the latest calendar year and the next previous calendar year.
 - (b) Any price and/or cost adjustment to any such contract different from those authorized by subparagraph (a) of this paragraph may be made only if the General Assembly specifically authorizes such adjustments and appropriates funds for such purpose, if required.
- (3) No award of any such contract shall be made unless an acceptable proposal is received pursuant to any request for proposal. An "acceptable" proposal means a proposal which meets all the requirements and/or conditions set forth in the act and meets all the requirements in the request for proposal. In addition, prior to the award of any such contract, the following requirements shall be met:
- (a) No proposal shall be accepted unless such proposal offers substantial cost savings to the state. Whether a proposal offers substantial cost savings to the state shall be determined as follows:
 1. Proposers shall offer to provide the services requested for a fixed annual contract amount.
 2. The Commissioner of the Department of Correction, the Commissioner of the Department of Finance and Administration, the Comptroller of the Treasury, and the Executive Director of the Fiscal Review Committee shall determine the likely annual full cost of monitoring any such contract.
 3. The proposer's annual cost shall be the sum of the costs of items (a) 1 and 2 of this subparagraph.
 4. The Commissioner of the Department of Correction, the Commissioner of the Department of Finance and Administration, the Comptroller of the Treasury, and the Executive Director of the Fiscal Review Committee shall determine the likely full annual cost to the state of providing the services requested.
 5. A proposer shall be considered to offer substantial cost savings only if the proposer's annual cost as determined in item (a) (3) of this subparagraph is at least five percent (5%) less than the likely full cost to the state of providing the same services as determined in item (a) (4) of this subparagraph.
 - (b) No proposal shall be accepted unless such proposal offers a level and quality of services which are at least equal to those which would be provided by the state. The Select Oversight Committee on Corrections shall review the proposals and shall advise the persons listed in subparagraph (1) (a) of this rule on the level and quality of services proposed.

(Rule 0420-1-1-.04, continued)

- (4) Prior to the awarding of any such contract, the following certifications must have taken place and/or been provided:
- (a) A plan shall be developed and certified by the Governor which demonstrates the method by which the state would resume control of the prison upon contract termination. Such plan shall be submitted for review and comment to the Select Oversight Committee on Corrections and the oversight committee shall solicit comments from law enforcement agencies, district attorneys general, criminal judges in the county in which the prison is located and the surrounding counties.
 - (b) The Commissioner of Correction shall certify to the Select Oversight Committee on Corrections that the security procedures proposed by the contractor are equal or superior to the security procedures in effect at existing state operated prisons and the Commissioner shall comment on the relationship of the procedures proposed by the contractor to each standard of security and control specified in the Standards for Adult Correctional Institutions by the American Correctional Association.
 - (c) The contractor must provide audited financial statements for the previous five (5) years or for each of the years the contractor has been in operation, if fewer than five (5) years; and provide other financial information as requested;
 - (d) The contractor must provide an adequate plan of insurance, specifically including insurance for civil rights claims, as determined by an independent risk management/actuarial firm with demonstrated experience in public liability for state governments. Such firm shall be selected by the Commissioner of the Department of Commerce and Insurance with the concurrence of the Board of Claims. In determining the adequacy of the plan such firm shall determine whether:
 - 1. The insurance is adequate to protect the state from any and all actions by a third party against the contractor or the state as a result of the contract;
 - 2. The insurance is adequate to protect the state against any and all claims arising as a result of any occurrence during the term of the contract; that is, the insurance is adequate on an occurrence basis, not on a claims-made basis;
 - 3. The insurance is adequate to assure the contractor's ability to fulfill its contract with the state in all respects, and to assure that the contractor is not limited in this ability because of financial liability which results from judgments; and
 - 4. The insurance is adequate to satisfy such other requirements specified by the independent risk management/actuarial firm.

Authority: T.C.A. §41-24-104, 41-24-105, 41-24-107 and 41-24-115. **Administrative History:** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986; effective November 29, 1986.

0420-3-1-.05 CONTRACT TERMS FOR MANAGEMENT OF CARTER COUNTY CORRECTIONAL FACILITY.

- (1) The following terms or conditions must be included in any contract for the operation of the Carter County Correctional Facility, including management, custody of inmates and provisions of security;
 - (a) The initial contract term shall be for a period of three (3) years.

(Rule 0420-1-1-.05, continued)

- (b) The initial contract may include an option to renew for an additional period of two (2) years.
- (c) After the first two (2) years of operation, but before renewing the initial contract, the performance of the contractor shall be compared to the performance of the state in operating similar facilities.
- (d) The contract may be renewed only if the contractor is providing at least the same quality of services as the state at a lower cost, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost.
- (e) The quality of services provided by the contractor and by the state at similar facilities shall be compared by the Select Oversight Committee on Corrections. The Committee shall determine whether the services provided by the contractor are superior, essentially equal, or poorer than services provided by the state. In making its determination, the Committee shall consider those factors required by law and such other factors as they may deem appropriate. The Committee shall report its determination to the parties responsible for determining whether the contract should be renewed.
- (f) The Fiscal Review Committee shall compare the full costs of the contractor with the state's full costs of operating similar facilities. The Committee shall determine whether the contractor is providing services at greater, essentially equal, or lower cost. In making its determination, the Committee shall consider all relevant costs of operation, including direct and indirect costs which should be allocated or assigned to the operations. The costs attributable to the contractor shall include any costs of monitoring the contract incurred by the Department of Correction or any other state agency which would not have been incurred by the state otherwise. The committee shall report its determination to the parties responsible for determining whether the contract should be renewed.
- (g) The contract must include adequate provisions to insure that applicants for employment and employees are provided those rights and privileges as may be required by law.

Authority: T.C.A. §§41-24-105 and 41-24-115. **Administrative History:** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986, - effective November 29, 1986.

0420-1-1-.06 ADDITIONAL TERMS FOR ALL CORRECTIONAL SERVICES CONTRACTS.

- (1) No contract for correctional services shall authorize, allow or imply a delegation of the authority or responsibility of the Commissioner to a prison contractor for any of the following:
 - (a) Developing and implementing procedures for calculating inmate release and parole eligibility dates;
 - (b) Developing and implementing procedures for calculating and awarding sentence credits;
 - (c) Approving inmates for furlough and work release;
 - (d) Approving the type of work inmates may perform, and the wages or sentence credits which may be given to inmates engaging in such work; and
 - (e) Granting, denying or revoking sentence credits; placing an inmate under less restrictive custody or more restrictive custody; or taking any disciplinary actions.

(Rule 0420-1-1-.06, continued)

- (2) All existing provisions of law shall apply to a prison contractor except as provided in these rules or otherwise provided in law.
 - (a) Title 12, Chapter 3, relative to public purchases, shall not apply to purchases and procurements of a prison contractor providing correctional services;
 - (b) Title 8, chapter 30, relative to civil service, shall not apply to employees of a prison contractor.
 - (c) A prison contractor providing correctional services shall not be bound by provisions of law governing the appointment, qualifications and duties of wardens, superintendents and other correctional employees, including provisions of Title 4, Chapter 6, and Title 41, Chapter 1, except as required to comply with the Constitution of Tennessee.
 - (d) Title 8, chapters 34 and 35, relative to membership in the Tennessee Consolidated Retirement System, shall not apply to employees of prison contractor except as provided specifically in the Private Prison Contract Act of 1986.
- (3) Each contract shall provide adequate provisions to insure that the Commissioner is provided that information and/or access necessary to allow him to fully monitor the performance of the prison contractor.

Authority: T.C.A. §§41-24-109, 41-24-110, 41-24-111, 41-24-115. **Administrative History.** (For history prior to November, 1986, see page 1.) New rule filed August 7, 1986, effective November 29, 1986.